

GAUTAM DUTTA (State Bar No. 199326)  
BUSINESS, ENERGY, AND ELECTION LAW, PC  
1017 El Camino Real # 504  
Redwood City, CA 94063  
Telephone: 415.236.2048  
Email: [Dutta@BEELawFirm.com](mailto:Dutta@BEELawFirm.com)  
Fax: 213.405.2416

Attorneys for Plaintiffs  
SHAHID BUTTAR FOR CONGRESS COMMITTEE and  
SHAHID BUTTAR

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SHAHID BUTTAR FOR CONGRESS  
COMMITTEE and SHAHID BUTTAR, an  
individual;

*Plaintiffs,*

vs.

HEARST COMMUNICATIONS, INC., a  
Delaware corporation; and DOES 1  
through 5;

*Defendants.*

CASE NO. 3:21-cv-05566-EMC

**PLAINTIFFS' OBJECTIONS TO  
DEFENDANTS' REPLY  
EVIDENCE**

Hearing Date: Mar. 17, 2022, 1:30 pm

JUDGE: Hon. Edward M. Chen  
COURTROOM: 5 – 17<sup>th</sup> Floor

**I. Introduction**

Plaintiffs Shahid Buttar for Congress Committee and Shahid Buttar **object** to Defendant Hearst Communications, Inc's improper reply evidence, proffered by way of the Feb. 22, 2022 Declaration of Diego Ibarguen (Dkt. 34, "Ibarguen Declaration").

**II. Legal Analysis**

The entirety of the Ibarguen Declaration must be disregarded, for it improperly and belatedly proffers evidence that Hearst could and should have proffered in its Dec. 2, 2021 Moving Papers. "The reply brief is *not intended* to be the brief that shows for the first time the

1 movant’s evidentiary support for the relief sought in the movant’s opening brief.<sup>1</sup> Indeed, this  
 2 Court has excluded a reply declaration because it “contain[ed] new evidence ... that *could have*  
 3 *been included* with ... [the opening] motion.”<sup>2</sup>

4 Here, Hearst improperly and belatedly proffers evidence that could and should have been  
 5 included with its Moving Papers. Specifically, the Ibarguen Declaration proffers email  
 6 correspondence from July 2020, relating to the issue of whether the requirements of the  
 7 Correction Statute (Civil Code §48a) were met.<sup>3</sup> There is no reason why that correspondence –  
 8 which was discussed by the *Complaint* (¶¶29-32) – could not have been presented as part of  
 9 Hearst’s Moving Papers.  
 10

### 11 **III. Conclusion**

12 Because Hearst improperly and belatedly proffers reply evidence, the entirety of the  
 13 Ibarguen Declaration and any part of Hearst’s papers relying on such barred evidence must be  
 14 summarily **disregarded**.  
 15  
 16  
 17  
 18  
 19  
 20

---

21 <sup>1</sup> *Mercado v. Sandoval, Inc.*, No. 2:08-cv-02648-GEB-EF, 2009 WL 2031715, at \*1 (E.D.  
 Cal. July 9, 2009) (italics added).

22 <sup>2</sup> *In re Lenovo Adware Litig.*, No. 15-MD-02624-RMW, 2016 WL 6277245, at \*14 (N.D.  
 Cal. Oct. 27, 2016) (italics added); *see also Provenz v. Miller*, 102 F.3d 1478, 1483 (9<sup>th</sup> Cir.  
 23 1996).

24 <sup>3</sup> Contrary to Defendants’ insinuations, a plaintiff’s correction request need not be directed  
 to a newspaper’s publisher – and may instead be directed to another employee under certain  
 25 circumstances. As the California Supreme Court has expressly held, a plaintiff has satisfied  
 Section 48a’s requirements “when the demand for correction is (1) served upon the publisher, (2)  
 26 served upon a person designated by the publisher to receive such notices, or (3) served upon  
 someone employed at the newspapers other than the publisher or the publisher’s designee *and* the  
 27 publisher acquires *actual* knowledge of the request for correction within the time limit set forth in  
 the statute.” *Freedom Newspapers, Inc. v. Superior Court*, 4 Cal.4<sup>th</sup> 652, 658 (Cal. 1992) (italics  
 28 in original); *cf.* Defendants’ Feb. 22, 2022 Reply (Dkt. 33), at 10:9-10:14.

1 DATED: Feb. 27, 2022

2  
3 BUSINESS, ENERGY, AND ELECTION  
4 LAW, PC

5  
6 By: /s/ Gautam Dutta

7 GAUTAM DUTTA, ESQ.

8 Attorneys for Plaintiffs

9 SHAHID BUTTAR FOR CONGRESS  
10 COMMITTEE and SHAHID BUTTAR  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28